

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

HAROLD E. CURRY, et al.,	)	
	)	CASE NO. 2:22-cv-153
Plaintiffs,	)	
	)	JUDGE EDMUND A. SARGUS
vs.	)	
	)	CHIEF MAGISTRATE JUDGE
JEROME TOWNSHIP, OHIO	)	ELIZABETH A. PRESTON DEAVERS
	)	
Defendant.	)	
	)	

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**JOINT MOTION FOR AN ORDER ADOPTING AND ISSUING A CONSENT DECREE**

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Now come Plaintiffs Harold E. Curry, Vivian Curry and AMH Development LLC (the foregoing are collectively “Plaintiffs”), and Defendant Jerome Township, Ohio (the “Township,” or “Defendant”) (collectively, Plaintiffs and Defendant are the “Parties”) to hereby notify the Court of a proposed settlement of this litigation pursuant to Ohio Rev. Code § 505.07. The parties request the Court adopt said Consent Decree pursuant to Ohio Revised Code § 505.07 in order to settle all claims pending in this case. A memorandum in support is attached hereto and incorporated herein.

Respectfully submitted,

/s/Larry H. James (per email consent)  
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*Trial Counsel for Harold E. Curry,  
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LLC*

*Counsel for Defendant Jerome Township, Ohio*

### **MEMORANDUM IN SUPPORT**

The parties herein have agreed to a proposed settlement, the terms which are memorialized in writing by consent decree (“Consent Decree”). A true and accurate copy of the proposed Consent Decree is attached as Exhibit A. On April 5, 2022, the Jerome Township Board of Trustees (“Board of Trustees” or “Trustees”) published notice of a public hearing on the proposed Consent Decree for April 21, 2022, at 7:00 p.m. at the Jerome Township Hall. On April 21, 2022, the Jerome Township Board of Trustees approved the Consent Decree and authorized counsel to file the approved Consent Decree with the Court, along with evidence satisfying the procedural requirements in Ohio Rev. Code § 505.07. As set forth herein, the Consent Decree constitutes a fair and reasonable settlement of the claims in this matter.

#### **I. BACKGROUND**

Plaintiffs are landowners and a developer who filed suit in this Court, alleging that the Township, through misuse of the referendum process, prevented Plaintiffs from developing their property (the “Property”). The Plaintiffs’ planned development complied with the Township Zoning resolution and the Township’s Comprehensive Plan. Township officials approved Plaintiffs’ application to rezone their Property from Rural Residential (“RU”) to Planned Development District (“PD”) (the “Rezoning”) as well as development plans for the Property (the “Original Development Plan”). Plaintiffs further allege that the Township misused the referendum process to delay and ultimately block Plaintiffs from developing a residential community known as the Curry Farm Development.

Through their Complaint filed on January 18, 2022, Plaintiffs assert five causes of action concerning the Development: (1) deprivation of Plaintiffs’ property and liberty interests without due process of law in violation of the Due Process Clause of the United States Constitution; (2)

unequal protection of law in violation of the Equal Protection Clause of the United States Constitution; (3) declaratory judgment that the rezoning of the Property to PD and approving the Curry Farm Development is constitutional, reasonable, substantially related to the public health and safety, and consistent with the Comprehensive Plan; (4) in the alternative, a regulatory taking of Plaintiffs' Property without just compensation in violation of the Fifth Amendment of the United States Constitution; and (5) a due process taking of Plaintiffs' Property without just compensation in violation of the Fourteenth Amendment of the United States Constitution. (ECF No. 1). Plaintiffs seek compensatory damages, as well as attorneys' fees and costs pursuant to 42 U.S.C. § 1988.

After Plaintiffs filed this suit, the Parties began settlement discussions that continued for several weeks. On April 5, 2022, Jerome Township published notice in the Marysville Tribune that a public meeting on the proposed Consent Decree would be held before the Board of Trustees on April 21, 2022. An affidavit of publication is attached as Exhibit B. On April 25, 2022, Plaintiffs published notice in the Marysville Tribune that the Parties intend to jointly file a proposed consent decree with this Court to approve the rezoning of certain land, approve a specified development plan and regulation text, and to settle this litigation. An affidavit of publication is attached as Exhibit C.

## **II. THE REQUIREMENTS OF OHIO REVISED CODE SECTION 505.07 WILL BE SATISFIED**

Pursuant to Ohio Revised Code § 505.07, the Ohio General Assembly expressly authorized townships to settle court actions by a consent decree, notwithstanding a referendum, which may include an agreement to rezone the property involved in the action and approval of a development plan. To enter such decree, the statute requires the Court to make the following findings of fact:

1. The Board of Trustees published sufficient notice of its intent to meet and consider and take action on the agreement at least fifteen days before the meeting; and

2. The Plaintiffs published sufficient notice at least ten days prior to the submission of the agreement for this Court's review and consideration; and
3. The agreement is fair and reasonable.

Ohio Rev. Code § 505.07. Each of these conditions will be satisfied here.

First, the Board of Trustees provided more than fifteen days' notice of its April 21, 2022 meeting. (Exhibit B.)

Second, Plaintiffs published sufficient notice of the intent to file a consent decree with the Court. The notice was published in the Marysville Tribune on April 25, 2022 2022. (Exhibit C.)

Third, the agreement is fair and reasonable. If approved by the Court, among other terms, the proposed Consent Decree will end the litigation with prejudice, provide a mutual release and waiver, provide Plaintiffs their desired zoning, and provide the Township with funds for use in future park and bike path development. Furthermore, the Consent Decree affirms the Board of Trustees' initial vote to rezone the Property in accordance with the Township's Comprehensive Plan and certain preliminary development plans and development requirements of the Township Zoning Resolution. When compared to the existing conditions, commitments, and Original Development Plans, the proposed Consent Decree memorializes certain concessions and commitments. Among other things, the proposed Consent Decree:

- Provides for the Plaintiffs to make a donation to the Township in the amount Twenty-Two Thousand Five Hundred Dollars (\$22,500) to be spent on parks and bike paths;<sup>1</sup>
- Requires certain additional neighborhood amenities, landscaping and buffering be provided within the Curry Farm Development.

Submitted in support of the Consent Decree are affidavits and declarations from Plaintiff Harold Curry (Exhibit D), Director of Land Acquisition for Plaintiff AMH Development, LLC Michael

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<sup>1</sup> Jerome Township does not have a parkland dedication fee. This donation was offered in compromise of disputed claims.

Medvedkov (Exhibit E), and Chair of the Jerome Township Board of Trustees Megan Sloat (Exhibit F). Each of these individuals urges the Court to find the settlement and Consent Decree to be fair and reasonable.

**WHEREFORE**, all parties respectfully request this Court issue an Order approving the proposed Consent Decree and approving the settlement of the case as set forth therein.

Respectfully submitted,

/s/Larry H. James

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 8, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Michael S. Loughry

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*Counsel for Defendant Jerome Township, Ohio*